K

1949.

File No. Govt of India
II/49
(R)

Legal Deptt.

B **BRANCH**

Subject:— Rules under the Govt of India Act 1935

E
8-X

File No. Govt. of India II/49
(R)

Gen. 194

77-B

Legal Department.

A revised draft notification is sent herewith.

2. Amendment of App: C: The amendments in the Political and Services Department draft were not in proper serial order. They have been arranged accordingly.

3. P. & S.D. draft rule 12B (p.119 ante): This has been recast into three different rules, 12B, 12C and 12D prescribing respectively (i) the method of nomination, (ii) the qualifications for appointment by nomination, and (ii) the qualifications for appointments by promotion. Similar amendment has been made in respect of rule 12E.

4. Para.(10) of the P. & S.D. draft at p.130: It is presumed the intention is to make the "Industrial Engineer" (rule 85) and the "Industrial Chemist" (rule 86) Class I officers. The amendment has been shifted to its proper place (vide para (10) and (11) in the revised notification at p. 165 post).

5. Para (iii) of revised sub-rule (3) of rule 37 in App: D (pp. 136-37 ante): Mention has been made at the end of this paragraph that the subordinates of the Jail Department shall not be eligible for appointment by nomination. This was omitted in the P. & S.D. draft (presumably through oversight), though it appeared in the H.D. draft at page 71 ante.

6. P. & S.D. draft rules 119A to 119H proposed to be inserted in Appendix D: Each of these rules has been recast into two sub-rules.

Id/-J.R.D. 2/2
Additional Secretary to Government.

U.R. to P. & S.D., No. 1283, dated the 3rd February 1949.

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BKS. 9/6/ 4c.

LegalDepartment.

The following remarks are offered on the draft forms at pages 153 to 171 ante proposed to be prescribed by the High Court for the use of the subordinate Civil Courts :-

Notice under section 26(1) and (2) at p. 161. The amendments suggested by the R.D. in pencil are unnecessary. The forms are to be prescribed by the High Court and it is not necessary to interfere with the drafting of the rules unless there is some legal objection or there is some objection from the administrative point of view. Only the last amendment which seems to be a typing error may be brought to the notice of the High Court i.e. in the last but one foot-note after the words "or the word" the word "you," may be inserted.

Notice under section 19(2) at p.163. It may be brought to the notice of the High Court that the word "caste" in line 3 which has remained through oversight may be omitted. No other amendment in the form need be suggested.

Application under section 38(3)(i) at p. 165. Section 38(3)(i) provides that a creditor may apply in the prescribed form to the Court for execution of the award which has been registered. Government has already prescribed Form No. 8 by rule 10 of the Bombay Agricultural Debtors Relief Rules,1947, made under section 55. No form under section 224(1) of the Government of India Act, 1935 can be prescribed by the High Court for the purpose.

Consolidated applications register at p. 169. As suggested in R.D. note at p. 197 the High Court may be requested to amend the Form suitably to show the details pertaining to creditors also.

2. Subject to the above remarks, the forms at pages 153 to171 ante proposed to be prescribed by the High

Court for the use of the subordinate Civil Courts, are in order and may be approved under the proviso to section 224(1) of the Government of India Act, 1935.

3. Under revised Instruction 40(b)(iv) of the Instructions issued under the Rules of Business, cases pertaining to amendments to High Court Rules and Orders are required to be submitted tothe Governor before the issue of orders. This case may, therefore, be submitted to H.E. the Governor for orders under the proviso to section 224(1) of the Government of India Act, 1935.

Id/-J.R.D. 4/2/
Additional Secretary to Government.

U.R. to R.D., No. 1410, dated the 5th February 1949.

BKB. 9/6/ 4c.

Legal Department.

In place of the Political and Services Department draft at page 9 ante, a revised draft notification is sent herewith.

Id/-J.R.D. 10/2
Additional Secretary to Government.

U.R. to P.& S.D., No. 1644 , dated the 11th February 1949.

BKS. 9/6/ 4c.

NOTIFICATION.

Political and Services Department.

Bombay Castle, 1949.

Government of India Act, 1935.

No.1586/34.- In exercise of the powers conferred by section 241 of the Government of India Act, 1935, the Governor of Bombay is pleased to amend the Bombay Civil Services Classification and Recruitment Rules, 1939, as follows namely :-

In sub-rule (1) of rule 11 of the said rules, for the words beginning with the words "the Crown" and ending withthe words "the local body," the following shall be substituted, namely :-

"the Crown, and Acceding State or a local body in India and has applied without the consent of the Head of the Office or Department of the Government of Bombay or the consent of the Provincial Government the Central Government, the Government of the the State or the local body."

By order of the Governor of Bombay,

Chief Secretary to Government.

BKS. 9/6/ 4c.

Legal Department.

Section 299(2) of the Government of India Act, 1935, provides that neither the Dominion Legislature nor a Provincial Legislature shall have power to make any law authorising the compulsory acquisition for public purpose of any land or any commercial or industrial undertakings or any interest in or in any company owning ~~an~~ any ~~xxxxxxxx~~ commercial or idustrial undertaking unless the law provides for the payment of compensation for the property acquired and either fixes the amount of compensation or specifies the principles on which, and the ~~a~~ manner in which, it is to be determined.

Any legislation promoted for the compulsory acquisition of the slum area must ~~xx~~ provide for the payment of compensation and such legislation must either fix the amount of compensation or specify the principle on which, and the manner in which, it (i.e. the amount of compensation) is to be determined. The word "payment" means the full satisfaction paid by money, and not by an exchange or compromise, or an accord or satisfaction. Commenting on the Bihar Zamindari Abolition Bill, the Advocate General of India has taken the same view. Thus no legislation ~~xx~~ for acquiring land on the lines envisaged in the Corporation's letter on page 1 ante is legally feasible.

Id/-J.R.D. 19/2
Additional Secretary to Government.

U.R. to H. & L. G. D. No. 2052 dated 21st February, 1949.

BKS. 9/6/ 4c.

Legal Department.

The Education and Industries Department file No. 8010-J of 1946-47 was received in this Department in November 1948 as an accompaniment to a Revenue Department file relating to the framing of a regulation under section 92 of the Government of India Act, 1935, for applying the Bombay Land Revenue Code, 1879, to the partially excluded areas of the Mehwassi Estates. It appears from the pencil note in the margin on page 147 of that file that the file was marked by Chief Secretary to the Joint Secretary Educational Department presumably sent it back to the Political and Services Department because as ascertained from the Revenue Department that Department obtained the Educational Department file referred to from the Political and Services Department for sending it as an accompaniment to their main file regarding the framing of the said Regulation. From the Legal Department stamp it appears that the file was not sent to the Legal Department, but since it has not been registered in the Legal Department, it appears it was taken back informally since Chief Secretary had marked it to Joint Secretary, Educational Department. It will be thus seen that file was not in Legal Department from 14th May 1948.

2. A copy of the draft regulation providing for the application of all laws to the Mehwassi Estates together with a note recorded by the Additional Secretary in respect thereof and forwarded to Revenue Department with Legal Department No. 4309 dated 20th April 1949 is sent herewith.

3. The following files received from the Education and Industries Department are therefore returned herewith along with the Education and

Industries Department file No. 8010-J of

1946-47, namely :

1. Revenue Department file No. 5181/39/69404;
2. Revenue Department file No. 2808/39/44907;
3. Revenue Department file No. 0/82121;
4. Revenue Department file No. 3667/45-II; and
5. Education and Industries Department
   file No. 8010 (Provisional).

~~Xx/xxxxxx~~.

Id/-S.L.C. 22/4
Assistant Secretary to Government.

U.R. to E. & I. D. No. 4462 ,dated the 22nd April 1949.

BKS. 9/6/ 4c.

Office of the R.L.A.

Entry No. 11 in the Provincial Legislative List reads as follows: "Election to the Provincial Legislature, subject to the provisions of this Act." The Provincial Legislature's authority to legislate in this matter is, therefore, subject to the provisions of the Government of India Act, 1935, and any law passed in this behalf must owe obedience to, and be in accordance with, the Government of India Act. Section 69 of that Act prescribes the disqualifications for membership of a Provincial Legislature. That section does not disqualify persons for being chosen as and for being a member of the Legislature if he is a Government contractor. It would not, therefore, be feasible to create this new category of disqualification inasmuch as a statute for that purpose would not be in accordance with section 69 and, therefore, would be beyond the competence of the Provincial Legislature.

Sd/-P.M.L. 31/3
Remembrancer of Legal Affairs.

U.R. to P.& S.D. No. 3528 dated 1st April 1949.

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